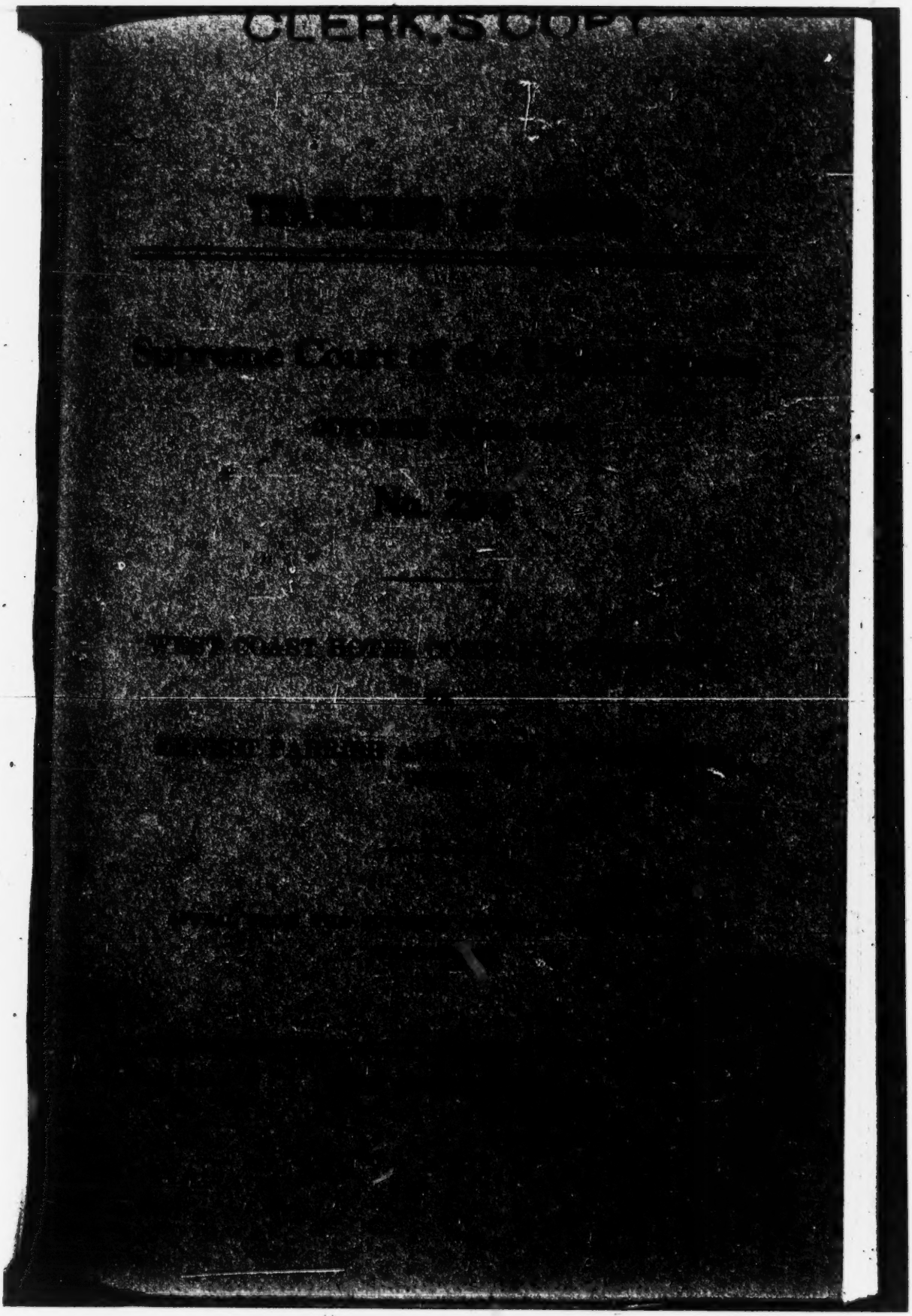


SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1936

No. 293

WEST COAST HOTEL COMPANY, APPELLANT,

vs.

ERNEST PARRISH AND ELSIE PARRISH, HIS WIFE

APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

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[fol. 1] [Caption omitted]

[fol. 2] **IN SUPERIOR COURT OF CHELAN COUNTY**

No. 12215

ERNEST PARRISH and ELSIE PARRISH, His Wife, Plaintiffs,

vs.

WEST COAST HOTEL COMPANY, a Corporation, Defendant

AMENDED COMPLAINT—Filed July 12, 1935

Come now the Plaintiffs in the above entitled action and for this their amended-complaint alleges and say:

I

That the Defendant is a corporation doing business as a hotel company and in the conduct of the said business at the times hereinafter named did operate the Cascadian Hotel at the City of Wenatchee, County of Chelan State of Washington.

II

That in the operation of the said Cascadian Hotel, the Defendant through its agents and manager did employ the Plaintiff, Elsie Parrish, to work and labor as a chambermaid in the said hotel, and that pursuant to said employment she did work and labor for the Defendant as follows:

1933:

August, 24½ hours.
September, 104½ hours.
October, 31 hours.

1934:

February, 65 hours.
March:

16	8	hours.
17	6½	
18	8	
19	8	
20	4	
21	8	
22	5	

1934:

March:

23	8	
24	8	
25	8	
26	4	
27	5	
28	7½	
29	8	
30	8	
Total	104	hours.

April:

1	7	hours.
3	7	
4	8	
5	8	
6	8	
7	8	
12	8	
13	7½	
14	8	
15	8	
16	8	
18	8	
19	8	
20	8	
21	8	
22	8	
23	8	
25	8	
26	4½	
27	8	
28	8	
29	8	
30	7½	
Total	177½	hours.

May:

2	8	hours.
3	8	
4	8	

1934:

May:

5	8	
6	6½	
7	8	
9	8	
10	8	
11	8	
12	8	

[fol. 3]

13	7½	
14	8	
15	6½	
Total	100½	hours.

July:

9	4	hours.
11	4	
12	4	
13	5	
14	7	
15	7	
16	8	
17	6½	
18	8	
20	8	
21	8	
22	8	
24	7	
25	6½	
26	7	
27	8	
28	7½	
30	6½	
31	5	
Total	129	hours.

August:

1	6½	hours.
3	8	
4	8	
5	7	

1934:

August:

6	6
7	7½
8	7
9	6½
10	8
12	8
13	8
14	7½
15	8
17	8
18	8
19	8
20	8
21	8
22	8
23	7½
24	8
26	7
27	8
28	8
29	6½
30	8
31	4½
Total	201½ hours.

September:

2	8 hours.
3	8
4	8
5	8
6	8
7	8
8	4
10	8
11	8
12	8
13	8
14	8
15	8
17	8

1934:

September:

18	8	
19	8	
20	8	
21	8	
23	5½	
24	8	
28	8	
29	8	
30	4½	
Total	197	hours.

October:

1	8	hours.
2	8	
3	8	
4	7½	
5	7½	
6	7½	
8	8	
9	8	
10	7	
11	6½	
12	8	
13	8	
15	8	
16	8	
17	8	
18	8	
19	8	
20	8	
22	8	
23	8	
24	8	
25	8	
26	8	
27	7	
29	8	
30	7½	
Total	202½	hours.

1934:

November:

1	5	hours.
2	8	
3	7	
5	6	
6	8	
7	8	
8	7½	
9	8	
10	7½	
12	7	
13	7	
14	7½	
15	7½	
16	7½	
17	8	
19	6½	
20	7	
21	7½	
22	7½	
23	7½	
24	4½	
26	8	
27	4	
28	4	
29	4½	
Total	164½	hours.

December:

3	6	hours.
4	7½	
5	8	
6	8	
7	8	
8	7½	
10	6½	
12	6	
13	7½	
14	5½	
15	7½	
16	8	
18	7	

1934:

December:

19	6½	
20	6	
23	4	
24	6	
25	6½	
26	4	
27	4½	
30	5	
31	5	
Total	140½	hours.

1935:

January:

1	7	hours.
2	4½	
3	6	
4	7	
5	4½	
7	7	
8	5	
9	6½	
10	8	
11	7½	
12	7½	
13	8	
14	7	
15	8	
16	8	
17	7½	
18	7½	
19	7½	
21	7½	
22	6½	
23	5½	
24	6½	
25	8	
26	6½	
28	6½	
29	8	
30	8	
31	8	
Total	195	hours.

1935:
[fol. 4]

February:

1	7½	hours.
2	7½	
4	8	
5	7½	
6	8	
7	7½	
8	8	
9	8	
11	8	
12	7½	
13	7½	
14	8	
20	5½	
21	8	
22	8	
23	8	
25	8	
26	8	
27	8	
28	8	
Total	177½	hours.

March:

1	8	hours.
2	7	
4	8	
5	8	
6	8	
7	8	
8	8	
9	8	
11	8	
12	8	
13	8	
14	8	
15	8	
16	5	
18	8	
19	8	
20	8	

1935:

March:

21	8	
22	8	
23	8	
25	8	
26	8	
27	8	
28	8	
29	8	
30	8	
Total	204	hours.

April:

1	8	hours.
2	8	
3	8	
4	8	
5	8	
6	8	
8	8	
9	8	
10	8	
11	8	
12	8	
13	8	
15	8	
16	8	
17	8	
18	8	
19	8	
20	8	
22	8	
23	8	
24	8	
25	8	
26	8	
27	8	
29	8	
30	8	
Total	208	hours.

1935:

May:		
1	4	hours.
3	8	
4	8	
5	8	
6	8	
7	8	
8	8	
10	8	
11	8	
Total	68	hours.

A total of 2,504½ hours, or 52 weeks and 8½ hours.

III

That by and according to the laws of the State of Washington in force at the time of the said employment and during all of the time the said labor was being performed, the [fol. 5] reasonable compensation and legal and statutory wages for the work so performed by the said Elsie Parrish was and is the sum of $14.50 per week and 48 hours did and does constitute a week, and that the labor so performed was without any additional or other contract, agreement, or arrangement for compensation; and upon the legal and statutory wage of $14.50 for each 48 hours or fraction thereof, that the said Plaintiff worked and labored for the Defendant at the said rate of wages and compensation for 2,504½ hours, which constitutes 52 weeks and 8½ hours. And there became and was due to her and she earned for said labor the sum of *of* $754.39, upon which the Defendant paid the sum of $538.20, leaving a balance due to the Plaintiff, Elsie Parrish, for the said labor at the rate of $14.50 for each 48 hours constituting a week, the sum of $216.19.

IV

That on or about the 12th day of May, 1935, the Defendant discharged the said Plaintiff and the said Elsie Parrish thereupon made demand upon the Defendant for the payment of the balance due for said services at the rate herein set forth, which was by the Defendant refused.

V

That previous to and at the time of the said employment and during all of the time of performance of the said labor, there had been passed by the legislature of the State of Washington and was in force an act relating to the employment of women and creating and establishing a commission known as the Industrial Welfare Commission of the State of Washington, with powers to establish conditions of labor and to fix reasonable standard wages sufficient for the decent maintenance of women. And that pursuant to the said law, the said Industrial Welfare Commission of the State of Washington was created and did make rules and regulations governing the employment of women and fixing a reasonable standard wage for certain [fol. 6] labor performed by women within the State of Washington; and that prior to the employment of the said Elsie Parrish as hereinbefore set forth, the said Industrial Welfare Commission had made said investigation and did establish rules and regulations governing such employment by women and fixing the compensation to be paid by the employers for such labor. And said rules and regulations were in existence and in operation during all of the time hereinbefore mentioned and were well-known to the Defendant, and which rules state as follows; to-wit:

The Industrial Welfare Committee for the State of Washington does hereby Order:

(1) That no person, firm, association or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State at a weekly wage rate of less than fourteen dollars and fifty cents ($14.50) per week of forty-eight hours, or at a daily wage rate of less than two dollars and fifty cents ($2.50) per day of eight hours, or at an hourly wage rate of less than thirty-five cents (35¢) per hour, such wage rates being the estimate of said Conference of the minimum wage adequate to supply the necessary cost of living and to maintain such employees in health and comfort. (The interpretation of this paragraph affecting the wage rates shall be that the weekly wage rate shall prevail where the employment extends over a period of one week or more; that the daily wage rate shall prevail where em-

ployment is for one or more days of eight hours, and the hourly wage rate shall prevail where employment is for less than eight hours in any one day.)

(2) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than six days in any one week; Provided, however, That when a sufficient emergency exists, [fol. 7] such as renders it absolutely impossible to secure efficient substitute help, the employees in the Public Housekeeping Industry may be employed for a continuous period of not exceeding ten consecutive days, at the expiration of which ten-day period they shall be given one day's rest. This emergency privilege shall not preclude any such employee from having at least four days' rest in any twenty-eight day period.

(3) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than five hours without a rest period of at least one-half hour; that a schedule of hours be posted in all cases.

(4) That where the special uniform be required it must be furnished and laundered by the employer.

(5) That when meals are furnished to employees the time used in eating may be deducted in arranging the schedule; that if a room be furnished same must be properly heated and sanitary.

(6) That there must be separate toilets for women and a suitable room provided for change of clothing and for eating lunches.

(7) That women shall not be employed as elevator operators after 12:00 midnight.

(8) That women shall not be employed as "bell hops."

(9) That when board is furnished 95 cents a day may be deducted; and for a room furnished $2.00 per week may be deducted; that 20 cents may be deducted for breakfast, 30 cents for lunch and 45 cents for dinner; that in every case there shall be a definite agreement as to whether board and room shall or shall not be furnished; that otherwise straight wage scale shall prevail.

(10) This Order shall become effective sixty (60) days from the date hereof, or October 4, 1921, and supersedes all other Orders heretofore issued, covering this industry."

[fol. 8] VI

That during the time of the said employment these Plaintiffs were intermarried and are now husband and wife.

Wherefore, Plaintiffs pray for judgment against the Defendant in the sum of $216.19, together with the costs of this action, and for such other and further relief as the premises justify.

C. B. Conner, Attorney for Plaintiffs.

Duly sworn to by Elsie Parrish. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 9] In Superior Court of Chelan County

[Title omitted]

Answer to Amended Complaint—Filed September 9, 1935

Comes now the defendant in the above action, and for Answer to plaintiffs' Complaint alleges as follows:

I

Admits that defendant employed plaintiff Elsie Parrish as maid, commencing during the month of August, 1933, and ending in May, 1935, and that the total hours of labor as set forth in plaintiff's Amended Complaint are substantially correct.

II

Defendant denies the allegations contained in paragraph III, except that the plaintiff worked for the defendant approximately 2504 hours; denies that the plaintiff was to receive $14.50 per week or any compensation other than that hereinafter specified; denies that the plaintiff earned the sum of $754.39 or any sum greater than $646.63, and denies that the defendant is indebted to the plaintiff in the sum of $216.19 or any sum whatsoever.

III

Defendant denies each and every allegation contained in paragraph V of plaintiffs' Amended Complaint.

For a further, separate and affirmative defense, defendant alleges:

That during the month of August, 1933, at which time the Plaintiff Elsie Lee (now Elsie Lee Parrish) was over the age of twenty-one years, she engaged to work for the defendant at its Cascadian Hotel in Wenatchee, Washington, [fol. 10] at an agreed wage of twenty-two and one-half cents per hour plus a light luncheon to be furnished by defendant to the plaintiff; that said arrangement continued until September 30, 1933, when by mutual consent plaintiff and defendant changed the rate of agreed compensation from 22½¢ per hour and luncheon to twenty-five cents per hour without luncheon furnished; that under the above mentioned arrangement the plaintiff continued to work for the defendant until May, 1935, at which time plaintiff was discharged; that at the time of plaintiff's discharge there was owing to her from the defendant the sum of $17.00, and no more, which amount was tendered to the plaintiff by the defendant in the same manner as all other payments had been made and accepted by the plaintiff since August, 1933, but plaintiff refused to accept said payment of $17.00 and continued to refuse to accept the same; the defendant herewith keeps the tender good by depositing the sum of $17.00 in court.

For a further, separate and second affirmative defense, defendant alleges:

That between August, 1933, and the last day of April, 1935, the defendant paid to the plaintiff the sum of $629.63, which was accepted by said plaintiff in full accord and satisfaction of all claims of plaintiff against the defendant, arising between said dates.

For a further separate and third affirmative defense, defendant alleges:

That the Act passed by the legislature of the State of Washington known as Chapter 174, Laws of 1913, purporting to delegate to an Industrial Welfare Commission the power to establish and fix standards of wages for employees in various industries of this State, and particularly the wages to be paid employees in housekeeping industry (hotels) is in violation of the constitutional rights of this

defendant as guaranteed it under Article V and Section 1 of Article XIV of the Constitution of the United States and [fol. 11] Sections 2 and 3 of Article I of the Constitution of the State of Washington.

Wherefore, defendant prays that the plaintiff take nothing by this action and that the same be dismissed with prejudice and with costs in favor of the defendant.

Crollard & O'Connor, Attorneys for Defendant.

Duly sworn to by Willard Abel. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 12] In Superior Court of Chelan County

[Title omitted]

Reply—Filed September 24, 1935

Come now the Plaintiffs in the above entitled action, and for their Reply to the Defendant's Answer to the Amended Complaint, allege and say:

I

Plaintiffs deny all of the allegations of said Answer which in any way dispute or deny the claims of the Plaintiffs.

II

Plaintiffs deny all allegations of said Answer which state, claim or purport to claim that the Plaintiff, Elsie Parrish, worked for the Defendant or agreed to do so at any price or compensation other than set forth in the Complaint herein; and deny the allegations of the Defendant that the sum of $17.00 and no more was due for her services, and alleges the fact to be that there was and is due the sum set forth in the Plaintiff's Complaint.

III

Plaintiffs also deny the allegations of receipt of $629.63 in full settlement and allege the fact to be that the said sum

was paid upon the account, leaving the amount due as set forth in the Plaintiff's Complaint.

IV

Further replying to said Answer, Plaintiffs allege and say that under the Statutes of the State of Washington in force at the time of the employment and during all of the said employment it was and is unlawful for the Defendant [fol. 13] to employ said Elsie Parrish at a price and for a compensation less than that provided by law and as claimed in the Plaintiffs' Complaint; and that all allegations of the Defendant's Answer seeking to set up and assert an employment at a rate less than the said statute provides is a violation of said statute and such claim constitutes no defense.

Wherefore, having fully replied to the Defendant's Answer, Plaintiffs pray for judgment as demanded in the Complaint herein.

C. B. Conner, Attorney for Plaintiffs.

Duly sworn to by Elsie Parrish. Jurat omitted in printing.

Service accepted Sept. 24, 1935. Crollard & O'Connor, Attorneys for Defendant.

[File endorsement omitted.]

[fols. 14-16] In Superior Court of Chelan County

No. —

Ernest Parrish and Elsie Parrish, His Wife, Plaintiffs,

vs.

West Coast Hotel Company, a Corporation, Defendant

Judgment and Decree—Filed November 9, 1935

This cause came on regularly for trial before the above entitled Court, Hon. W. O. Parr sitting without a jury, on October 17, 1935; the case was tried upon the plaintiff's Amended Complaint, the defendant's Answer thereto, and the plaintiff's Reply; plaintiffs were present in person and

represented by their attorney of record, C. B. Connor, Esq.; the defendant was represented by its attorney of record, Crollard and O'Connor; witnesses were sworn and both oral and documentary evidence was offered and received; after both parties announced they rested their case, and arguments for counsel of respective parties were heard; and the Court being fully advised in the premises and having heretofore made and entered its Findings of Fact and Conclusions of Law,

It is Here and Now Considered and Ordered that the minimum wage Act, Chapter 174, Laws of 1913, and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the Constitutional rights of this defendant guaranteed it under Amendment 5, and Section 1 of Amendment 14 of the Constitution of the United States.

It is Further Considered and Ordered that plaintiff is entitled to Judgment against defendant in the sum of $17.00, and costs.

Done in Open Court this 9th day of November, 1935.

W. O. Parr, Judge.

[File endorsement omitted.]

[fols. 17-20] In Superior Court of Chelan County

[Title omitted]

Notice of Appeal—Filed November 18, 1935

To the Above Named Defendant, West Coast Hotel Company and Crollard & O'Connor, Attorneys of Record:

Notice is Hereby Given that the Plaintiffs, Elsie Parrish and Ernest Parrish, feeling aggrieved, do hereby appeal to the Supreme Court of the State of Washington from that certain Judgment entered in the above entitled cause and court on the 9th day of November, 1935, and from each and every part thereof, wherein and whereby it was adjudged that the mimimum wage Act, Chapter 174, Laws of 1913, of the State of Washington and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of

the Constitutional rights of this defendant guaranteed it under Amendment 5, Section 1 of Amendment 14 of the Constitution of the United States; and whereby the Plaintiffs were awarded the sum of only $17.00 and costs instead of the sum of Two Hundred Sixteen Dollars and Nineteen Cents ($216.19) as claimed by the Plaintiffs.

Dated at Wenatchee, Washington, this 18th day of November, 1935.

C. B. Conner, Attorney for Plaintiffs.

Copy of the foregoing Notice of Appeal received and service admitted at Wenatchee, Washington, this 18th day of November, 1935.

Crollard & O'Connor, Attorneys for Defendant.

[fol. 21] In Superior Court of Chelan County

[Title omitted]

Findings of Fact and Conclusions of Law—Filed November 9, 1935

This cause came on regularly for trial before the above entitled Court, Hon. W. O. Parr, sitting without a jury, on October 17, 1935; the case was tried upon the plaintiff's Amended Complaint, the Defendant's answer thereto, and the Plaintiff's reply; Plaintiff, Elsie Parrish, was present in person and represented by her attorney of record, C. B. Conner, Esq.; and the defendant, by its attorneys of record, Messrs. Crollard and O'Connor; witnesses were sworn and both oral and documentary evidence was offered and received; after both parties announced they rested their case, and arguments for counsel of respective parties were heard; and the Court being fully advised in the premises, does here and now make and enter the following:

Findings of Fact

1. That the defendant, West Coast Hotel Company, is a corporation, doing business as a hotel company, and in the conduct of said business operates the Cascadian Hotel in City of Wenatchee, Chelan County, Washington, and did at all times during the period referred to in Plaintiff's complaint.

[fol. 22] 2. That about August of 1933, the Plaintiff, Elsie Parrish, whose name at that time was Elsie Lee, was employed by the Defendant through its Manager, to work as a chambermaid in the Cascadian Hotel in Wenatchee, Washington, at an agreed wage of 22 cents per hour, plus a light luncheon; that commencing in October 1933, and thereafter to the close of her employment in May of 1935, the agreed wage to be paid said Plaintiff by the Defendant was 25 cents per hour; that during said period the Plaintiff worked 2504 hours for the Defendant and was paid for said services at the agreed wage of 22 cents per hour and 25 cents per hour (in ink) 35¢ per hr. or 14 *50* per week, respectively, a total sum of $646.63; that at the time the Defendant was discharged by the Plaintiff, to-wit: May 11, 1935, there was owing to her from the defendant the sum of $17.00, and no more, [which amount the defendant duly tendered to the plaintiff, but which the plaintiff refused to accept;]* that the defendant had theretofore paid to the plaintiff the sum of $629.63.

3. That the contention of the plaintiff that she should have been paid during all of said period at the rate of 35¢ per hour, or $14.50 per week, because of the existence of a so-called minimum wage scale for adult women, as fixed by the Industrial Welfare Commission of the State of Washington, is unsound, is not sustained by the evidence, and that any attempt to fix the minimum wage for adult women as prescribed by Chapter 174 of the Laws of 1913 and the Acts of the Industrial Welfare Commission thereunder, are as to the defendant in this case a violation of its Constitutional rights guaranteed it under Amendment [fol. 23] V and Section 1, of Amendment XIV of the Constitution of the United States, [and Sections 2 and 3 of Article I of the Constitution of the State of Washington.]*

Done in Open Court this 9th day of [October],* November 1935.

W. O. Parr, Judge.

Based upon the foregoing Findings of Fact, the Court here and now makes and enters the following:

[* Matter in brackets struck out in copy.]

CONCLUSIONS OF LAW

That the minimum wage Act, Chapter 174, Laws of 1913, and the Acts of the Industrial Welfare Commission, so far as it attempts to fix the scale of wages for adult women, is in violation of the constitutional rights of this department guaranteed it under Amendment 5 and Section I of Amendment 14 of the Constitution of the United States.

That plaintiff is entitled to Judgment against defendant in the sum of $17.00 and costs.

Done in Open Court this 9th day of Nov., 1935.

W. O. Parr, Judge.

[File endorsement omitted.]

[fols. 24–46] Clerk's certificate to foregoing paper omitted in printing.

[fol. 47] IN SUPREME COURT OF WASHINGTON

Department Two

No. 26038

ERNEST PARRISH et al., Appellants,

v.

WEST COAST HOTEL COMPANY, Respondent

OPINION—Filed April 2, 1936

Mindful of the duty of the state to protect women and minors from conditions of labor which have a pernicious effect on their health and morals, the legislature enacted chapter 174, Laws of 1913. The provisions of the act pertinent to this appeal are as follows:

"SECTION 1. The welfare of the State of Washington demands that women and minors be protected from conditions of labor which have a pernicious effect on their health and morals. The State of Washington, therefore, exercising herein its police and sovereign power declares that in-

adequate wages and unsanitary conditions of labor exert such pernicious effect.

"SEC. 2. It shall be unlawful to employ women or minors in any industry or occupation within the State of Washington under conditions of labor detrimental to their health or morals; and it shall be unlawful to employ women workers in any industry within the State of Washington at wages which are not adequate for their maintenance.

"SEC. 3. There is hereby created a commission to be known as the 'Industrial Welfare Commission' for the State of Washington, to establish such standards of wages and conditions of labor for women and minors employed within the State of Washington, as shall be held hereunder to be reasonable and not detrimental to health and morals, and which shall be sufficient for the decent maintenance of women."

From August, 1933, to May, 1935, when she was discharged, plaintiff was in the employ of defendant hotel corporation as a chambermaid at an agreed wage which [fol. 48] was less than the minimum weekly wage of fourteen dollars and fifty cents as fixed by the Industrial Welfare Commission under sec. 3, chapter 174, Laws of 1913. If payable at the agreed wage, defendant owes plaintiff a balance of seventeen dollars. If entitled to payment at the minimum rate established by the Industrial Welfare Commission, a balance of $216.19 is due to the plaintiff. To recover that balance, plaintiff brought this action. The cause was tried to the court, which found that plaintiff was entitled to a recovery of seventeen dollars against defendant. The court further found that chapter 174, Laws of 1913, in so far as it applies to adult women, is an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the constitution of the United States.

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." Sec. 1, Amendment XIV, Federal Constitution.

Judgment was entered accordingly. Plaintiff appealed.

In Larsen v. Rice, 100 Wash. 642, 171 Pac. 1037, we held that the minimum wage law (chapter 174, Laws of 1913) for women was constitutional. We said:

"It is undoubtedly a general rule that private controversies between individuals sui juris may be compromised by them by mutual agreement, and that the courts will not, where no question of fraud intervenes, relieve from the agreement, even though it be shown that the one gained rights thereby to which he would not otherwise have been entitled and that the other gave up rights to which he was fully entitled; this, on the principle that compromises are favored by the law, since they tend to prevent strife and conduce to peace and to the general welfare of the community. But the controversy here had an added element not found in the ordinary controversy between individuals. It was not wholly of private concern. It was affected with a public interest. The state, having declared that a minimum wage of a certain amount is necessary to a decent maintenance of an employee engaged in the employment in which the respondent was engaged, has an interest in seeing that the fixed compensation is actually paid. The statute making the declaration not only makes contracts of em- [fol. 49] ployment for less than the minimum wage void, but has sought to secure its enforcement by making it a penal offense on the part of the employer to pay less than the minimum wage, and by giving to the employee a right of action to recover the difference between the wage actually paid and such minimum wage. The statute was not, therefore, intended solely for the benefit of the individual wage earner. It was believed that the welfare of the public requires that wage earners receive a wage sufficient for their decent maintenance. The statute being thus protective of the public as well as of the wage earner, it must follow that any contract of settlement of a controversy arising out of a failure to pay the fixed minimum wage in which the state did not participate is voidable, if not void. Especially must this be so, as here, where the contract of settlement is executory, has been repudiated by one of the parties, the parties can be placed in statu quo, and the wage earner, by carrying out the contract, will not receive the wage to which she is justly entitled."

The Oregon minimum wage law for women—in all essentials the same as our law—was sustained in Stettler v. O'Hara, 69 Or. 519, 139 Pac. 743; and Simpson v. O'Hara, 70 Or. 261, 141 Pac. 158. These two cases were affirmed without an opinion by an equally divided court in Stettler v. O'Hara, 243 U. S. 629, Mr. Justice Brandeis taking no part in the consideration and decision of the cases. In Bunting v. Oregon, 243 U. S. 426, the United States Supreme Court sustained a wage-fixing statute. The statute limited the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment, to ten hours a day, with a proviso requiring such employees, if they worked more than ten hours a day, to accept for the three additional hours permitted not less than fifty per cent more than their usual wage.

By Act of September 19, 1918 (40 Stat. 960, c. 174), Congress provided for the fixing of minimum wages for women and children in the District of Columbia. The statute was declared unconstitutional on the ground that it authorizes an unconstitutional interference with the freedom of contract included within the guaranties of the due process clause of the fifth amendment of the constitution of the [fol. 50] United States. Adkins v. Children's Hospital, 261 U. S. 525. Mr. Chief Justice Taft, dissenting, said:

"The boundary of the police power beyond which its exercise becomes an invasion of the guaranty of liberty under the Fifth and Fourteenth Amendments to the Constitution is not easy to mark. Our Court has been laboriously engaged in pricking out a line in successive cases. We must be careful, it seems to me, to follow that line as well as we can and not to depart from it by suggesting a distinction that is formal rather than real.

"Legislatures in limiting freedom of contract between employee and employer by a minimum wage proceed on the assumption that employees, in the class receiving least pay, are not upon a full levee of equality of choice with their employer and in their necessitous circumstances are prone to accept pretty much anything that is offered. They are peculiarly subject to the overreaching of the harsh and greedy employer. The evils of the sweating system and of the long hours and low wages which are characteristic of it are well known. Now, I agree that it is a disputable question in the field of political economy how far a statu-

tory requirement of maximum hours or minimum wages may be a useful remedy for these evils, and whether it may not make the case of the oppressed employee worse than it was before. But it is not the function of this Court to hold congressional acts invalid simply because they are passed to carry out economic views which the Court believes to be unwise or unsound.

"Legislatures which adopt a requirement of maximum hours or minimum wages may be presumed to believe that when sweating employers are prevented from paying unduly low wages by positive law they will continue their business, abating that part of their profits, which were wrung from the necessities of their employees, and will concede the better terms required by the law; and that while in individual cases hardship may result, the restriction will enure to the benefit of the general class of employees in whose interest the law is passed and so to that of the community at large.

"The right of the legislature under the Fifth and Fourteenth Amendments to limit the hours of employment on the score of the health of the employee, it seems to me, has been firmly established. As to that, one would think, the line had been pricked out so that it has become a well formulated rule. In Holden v. Hardy, 169 U. S. 366, it was applied to miners and rested on the unfavorable environment of employment in mining and smelting. In Lochner v. New York, 198 U. S. 45, it was held that restricting those employed in bakeries to ten hours a day was an arbitrary and invalid interference with the liberty of contract secured by the Fourteenth Amendment. Then followed a number of cases beginning with Muller v. Oregon, 208 U. S. 412, sustaining the validity of a limit on maximum hours of labor for women to which I shall hereafter allude, and following these cases came Bunting v. Oregon, 243 U. S. 426. In that case this Court sustained a law limiting the hours of labor of any person, whether man or woman, working in any mill, factory or manufacturing establishment to ten hours a day with a proviso as to further hours to which I shall hereafter advert. The law covered the whole field of industrial employment and certainly covered the case of persons employed in bakeries. Yet the opinion in the Bunting Case does not mention the Lochner Case. No one [fol. 51] can suggest any constitutional distinction between

employment in a bakery and one in any other kind of a manufacturing establishment which should make a limit of hours in the one invalid, and the same limit in the other permissible. It is impossible for me to reconcile the Bunting Case and the Lochner Case and I have always supposed that the Lochner Case was thus overruled sub silentio. Yet the opinion of the Court herein in support of its conclusion quotes from the opinion in the Lochner Case as one which has been sometimes distinguished but never overruled. Certainly there was no attempt to distinguish it in the Bunting Case.

However, the opinion herein does not overrule the Bunting Case in express terms, and therefore I assume that the conclusion in this case rests on the distinction between a minimum of wages and a maximum of hours in the limiting of liberty to contract. I regret to be at variance with the Court as to the substance of this distinction. In absolute freedom of contract the one term is as important as the other, for both enter equally into the consideration given and received, a restriction as to one is not any greater in essence than the other, and is of the same kind. One is the multiplier and the other the multiplicand.

"If it be said that long hours of labor have a more direct effect upon the health of the employee than the low wage, there is very respectable authority from close observers, disclosed in the record and in the literature on the subject quoted at length in the briefs, that they are equally harmful in this regard. Congress took this view and we can not say it was not warranted in so doing.

"With deference to the very able opinion of the Court and my brethren who concur in it, it appears to me to exaggerate the importance of the wage term of the contract of employment as more inviolate than its other terms. Its conclusion seems influenced by the fear that the concession of the power to impose a minimum wage must carry with it a concession of the power to fix a maximum wage. This, I submit, is a non sequitur. A line of distinction like the one under discussion in this case is, as the opinion elsewhere admits, a matter of degree and practical experience and not of pure logic. Certainly the wide difference between prescribing a minimum wage and a maximum wage could as a matter of degree and experience be easily affirmed.

"Moreover, there are decisions by this Court which have sustained legislative limitations in respect to the wage term in contracts of employment. In McLean v. Arkansas, 211 U. S. 539, it was held within legislative power to make it unlawful to estimate the graduated pay of miners by weight after screening the coal. In Knoxville Iron Co. v. Harbison, 183 U. S. 13, it was held that store orders issued for wages must be redeemable in cash. In Patterson v. Bark Eudora, 190 U. S. 169, a law forbidding the payment of wages in advance was held valid. A like case is Strathearn S. S. Co. v. Dillon, 252 U. S. 348. While these did not impose a minimum on wages, they did take away from the employee the freedom to agree as to how they should be fixed, in what medium they should be paid, and when they should be paid, all features that might affect the amount or the mode of enjoyment of them. The first two really rested on the advantage the employer had in dealing with the employee. The third was deemed a proper curtailment of a sailor's right of contract in his own inter- [fol. 52] est because of his proneness to squander his wages in port before sailing. In Bunting v. Oregon, supra, employees in a mill, factory or manufacturing establishment were required if they worked over ten hours a day to accept for the three additional hours permitted not less than fifty per cent. more than their usual wage. This was sustained as a mild penalty imposed on the employer to enforce the limitation as to hours; but it necessarily curtailed the employee's freedom to contract to work for the wages he saw fit to accept during those three hours. I do not feel, therefore, that either on the basis of reason, experience or authority, the boundary of the police power should be drawn to include maximum hours and exclude a minimum wage.

"Without, however, expressing an opinion that a minimum wage limitation can be enacted for adult men, it is enough to say that the case before us involves only the application of the minimum wage to women. If I am right in thinking that the legislature can find as much support in experience for the view that a sweating wage has as great and as direct a tendency to bring about an injury to the health and morals of workers, as for the view that long hours injure their health, then I respectfully submit that Muller v. Oregon, 208 U. S. 412, controls this case. The

law which was there sustained forbade the employment of any female in any mechanical establishment or factory or laundry for more than ten hours. This covered a pretty wide field in women's work and it would not seem that any sound distinction between that case and this can be built up on the fact that the law before us applies to all occupations of women with power in the board to make certain exceptions. Mr. Justice Brewer, who spoke for the Court in Muller v. Oregon, based its conclusion on the natural limit to women's physical strength and the likelihood that long hours would therefore injure her health, and we have had since a series of cases which may be said to have established a rule of decision. Riley v. Massachusetts, 232 U. S. 671; Miller v. Wilson, 236 U. S. 373; Bosley v. McLaughlin, 236 U. S. 385. The cases covered restrictions in wide and varying fields of employment and in the later cases it will be found that the objection to the particular law was based not on the ground that it had general application but because it left out some employments.

"I am not sure from a reading of the opinion whether the Court thinks the authority of Muller v. Oregon is shaken by the adoption of the Nineteenth Amendment. The Nineteenth Amendment did not change the physical strength or limitations of women upon which the decision in Muller v. Oregon rests. The Amendment did give women political power and makes more certain that legislative provisions for their protection will be in accord with their interests as they see them. But I don't think we are warranted in varying constitutional construction based on physical differences between men and women, because of the Amendment.

"But for my inability to agree with some general observations in the forcible opinion of Mr. Justice Holmes [fol. 53] who follows me, I should be silent and merely record my concurrence in what he says. It is perhaps wiser for me, however, in a case of this importance, separately to give my reasons for dissenting."

Mr. Justice Holmes' dissenting opinion reads, in part, as follows:

"The question in this case is the broad one, Whether Congress can establish minimum rates of wages for women in the District of Columbia with due provision for special

circumstances, or whether we must say that Congress has no power to meddle with the matter at all. To me, notwithstanding the deference due to the prevailing judgment of the Court, the power of Congress seems absolutely free from doubt. The end, to remove conditions leading to ill health, immorality and the deterioration of the race, no one would deny to be within the scope of constitutional legislation. The means are means that have the approval of Congress, of many States, and of those governments from which we have learned our greatest lessons. When so many intelligent persons, who have studied the matter more than any of us can, have thought that the means are effective and are worth the price, it seems to me impossible to deny that the belief reasonably may be held by reasonable men. If the law encountered no other objection than that the means bore no relation to the end or that they cost too much I do not suppose that anyone would venture to say that it was bad. I agree, of course, that a law answering the foregoing requirements might be invalidated by specific provisions of the Constitution. For instance it might take private property without just compensation. But in the present instance the only objection that can be urged is found within the vague contours of the Fifth Amendment, prohibiting the depriving any person of liberty or property without due process of law. To that I turn.

"The earlier decisions upon the same words in the Fourteenth Amendment began within our memory and went no farther than an unpretentious assertion of the liberty to follow the ordinary callings. Later that innocuous generality was expanded into the dogma, Liberty of Contract. Contract is not specially mentioned in the text that we have to construe. It is merely an example of doing what you want to do, embodied in the word liberty. But pretty much all law consists in forbidding men to do some things that they want to do, and contract is no more exempt from law than other acts. Without enumerating all the restrictive laws that have been upheld I will mention a few that seem to me to have interfered with liberty of contract quite as seriously and directly as the one before us. Usury laws prohibit contracts by which a man receives more than so much interest for the money that he lends. Statutes of frauds restrict many contracts to certain forms. Some Sunday laws prohibit practically all contracts during one-

seventh of our whole life. Insurance rates may be regulated. German Alliance Insurance Co. v. Lewis, 233 U. S. 389. (I concurred in that decision without regard to the [fol. 54] public interest with which insurance was said to be clothed. It seemed to me that the principle was general.) Contracts may be forced upon the companies. National Union Fire Insurance Co. v. Wanberg, 260 U. S. 71. Employers of miners may be required to pay for coal by weight before screening. McLean v. Arkansas, 211 U. S. 539. Employers generally may be required to redeem in cash store orders accepted by their employees in payment. Knoxville Iron Co. v. Harbison, 183 U. S. 13. Payment of sailors in advance may be forbidden. Patterson v. Bark Eudora, 190 U. S. 169. The size of a loaf of bread may be established. Schmidinger v. Chicago, 226 U. S. 578. The responsibility of employers to their employees may be profoundly modified. New York Central R. R. Co. v. White, 243 U. S. 188. Arizona Employers Liability Cases, 250 U. S. 400. Finally women's hours of labor may be fixed; Muller v. Oregon, 208 U. S. 412; Riley v. Massachusetts, 232 U. S. 671, 679; Hawley v. Walker, 232 U. S. 718; Miller v. Wilson, 236 U. S. 373; Bosley v. McLaughlin, 236 U. S. 385; and the principle was extended to men with the allowance of a limited overtime to be paid for 'at the rate of time and one-half of the regular wage,' in Bunting v. Oregon, 243 U. S. 426.

"I confess that I do not understand the principle on which the power to fix a minimum for the wages of women can be denied by those who admit the power to fix a maximum for their hours of work. I fully assent to the proposition that here as elsewhere the distinctions of the law are distinctions of degree, but I perceive no difference in the kind or degree of interference with liberty, the only matter with which we have any concern, between the one case and the other. The bargain is equally affected whichever half you regulate. Muller v. Oregon, I take it, is as good law today as it was in 1908. It will need more than the Nineteenth Amendment to convince me that there are no differences between men and women, or that legislation cannot take those differences into account. I should not hesitate to take them into account if I thought it necessary to sustain this act. Quong Wing v. Kirkendall, 223 U. S. 59, 63. But after Bunting v. Oregon, 243 U. S. 426, I had supposed

that it was not necessary, and that Lochner v. New York, 198 U. S. 45, would be allowed a deserved repose.

"This statute does not compel anybody to pay anything. It simply forbids employment at rates below those fixed as the minimum requirement of health and right living. It is safe to assume that women will not be employed at even the lowest wages allowed unless they earn them, or unless the employer's business can sustain the burden. In short the law in its character and operation is like hundreds of so-called police laws that have been upheld."

Respondent insists that the foregoing decision of the United States Supreme Court is controlling and that the judgment should be affirmed. Let us bear in mind that [fol. 55] Adkins v. Children's Hospital, 261 U. S. 525, was based upon an act of Congress passed for the District of Columbia. In O'Gorman & Young v. Hartford Fire Insurance Co., 282 U. S. 249, the United States Supreme Court held that the business of insurance is so far affected with the public interest that the state may regulate the rates and likewise the relations of those engaged in business; that a state statute dealing with a subject clearly within the police power can not be declared void upon the ground that the specific method of regulation prescribed by it is unreasonable, in the absence of any factual foundation in the record to overcome the presumption of constitutionality. The court said:

"The statute here questioned deals with a subject clearly within the scope of the police power. We are asked to declare it void on the ground that the specific method of regulation prescribed is unreasonable and hence deprives the plaintiff of due process of law. As underlying questions of fact may condition the constitutionality of legislation of this character, the presumption of constitutionality must prevail in the absence of some factual foundation of record for overthrowing the statute. It does not appear upon the face of the statute, or from any facts of which the court must take judicial notice, that in New Jersey evils did not exist in the business of fire insurance for which this statutory provision was an appropriate remedy. The action of the legislature and of the highest court of the State indicates that such evils did exist. The record is barren of any allegation of fact tending to show unreasonableness."

That the powers not delegated to the United States by the constitution nor prohibited by it to the states are reserved to the states needs no citation of sustaining authority. The police power of a state was not given to the federal government nor prohibited by the constitution to the people of the respective states, hence it is one of the reserved powers. It is true that the employer and the employee are deprived to a certain extent of their liberty to contract by the minimum wage law. However, if the de- [fol. 56] privation is with due process, if it corrects a known and stated public evil, if it promotes the public welfare—that is, if it is a reasonable exercise of the police power—it is constitutional and it is a proper exercise of legislative power. In Nebbia v. New York, 291 U. S. 502, it was held that one may be compelled to pay a greater sum than that which may be asked because at another end of the industrial scale is found one who may not be paid what his product is worth and who may be unable to bargain freely with those who possess the marketing facilities. The court said:

"The law-making bodies have in the past endeavored to promote free competition by laws aimed at trusts and monopolies. The consequent interference with private property and freedom of contract has not availed with the courts to set these enactments aside as denying due process. Where the public interest was deemed to require the fixing of minimum prices, that expedient has been sustained. If the law-making body within its sphere of government concludes that the conditions or practices in an industry make unrestricted competition an inadequate safeguard of the consumer's interests, produce waste harmful to the public, threaten ultimately to cut off the supply of a commodity needed by the public, or portend the destruction of the industry itself, appropriate statutes passed in an honest effort to correct the threatened consequences may not be set aside because the regulation adopted fixes prices reasonably deemed by the legislature to be fair to those engaged in the industry and to the consuming public. And this is especially so where, as here, the economic maladjustment is one of price, which threatens harm to the producer at one end of the series and the consumer at the other. The Constitution does not secure to anyone liberty to conduct his business in such fashion as to inflict injury upon

the public at large, or upon any substantial group of the people. Price control, like any other form of regulation, is unconstitutional only if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt, and hence an unnecessary and unwarranted interference with individual liberty."

The legal duty placed upon the employer by our minimum wage law is that he must pay women in his employ in wages a sum found to be necessary for the maintenance of the health as well as the morals of the employee. If the wages paid equal or are in excess of the cost of the main- [fol. 57] tenance of a normal health standard, the state's concern in the matter ceases. If the employer pays less than the amount found to be the minimum cost of the maintenance of the normal health standard by virtue of his more secure and powerful economic position, the transaction savors of exploitation. Restraints upon the liberty to contract have been declared constitutional in many cases, as cited in the dissenting opinion of Mr. Justice Holmes in Adkins v. Children's Hospital, 261 U. S. 525. The underlying principle in all such cases is the state's right, the state's duty, to interfere in the terms of a contract between private parties when there is an inequality in bargaining power.

"And therefore I take it to be an established rule, that a mortgagee can never provide at the time of making the loan for any event or condition on which the equity of redemption shall be discharged, and the conveyance absolute. And there is great reason and justice in this rule, for necessitous men are not, truly speaking, free men, but, to answer a present exigency, will submit to any terms that the crafty may impose upon them." Vernon v. Bethell, 2 Eden's Chancery Reports 68.

The mere fact that the parties are of full age does not necessarily deprive the state of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to a contract shall be protected against himself.

"The legislature has also recognized the fact, which the experience of legislators in many States has corroborated, that the proprietors of these establishments and their oper-

atives do not stand upon an equality, and that their interests are, to a certain extent, conflicting. The former naturally desire to obtain as much labor as possible from their employes, while the latter are often induced by the fear of discharge to conform to regulations which their judgment, fairly exercised, would pronounce to be detrimental to their health or strength. In other words, the proprietors lay down the rules and the laborers are practically constrained to obey them. In such cases self-interest is often an unsafe guide, and the legislature may properly interpose its authority.

[fol. 58] "It may not be improper to suggest in this connection that although the prosecution in this case was against the employer of labor, who apparently under the statute is the only one liable, his defense is not so much that his right to contract has been infringed upon, but that the act works a peculiar hardship to his employes, whose right to labor as long as they please is alleged to be thereby violated. The argument would certainly come with better grace and greater cogency from the latter class. But the fact that both parties are of full age and competent to contract does not necessarily deprive the State of the power to interfere where the parties do not stand upon an equality, or where the public health demands that one party to the contract shall be protected against himself. 'The State still retains an interest in his welfare, however reckless he may be. The whole is no greater than the sum of all the parts, and when the individual health, safety and welfare are sacrificed or neglected, the State must suffer.'" Holden v. Hardy, 169 U. S. 366.

We held in Larsen v. Rice, 100 Wash. 642, 171 Pac. 1037, that the controversy there, which differs in no important particular from the controversy here, had an added element not found in the ordinary controversy by the individual. It was not wholly a private concern. It was affected with a public interest, the state having declared the minimum wage of a certain amount to be necessary. Therefore the state has an interest in the way that the fixed compensation is actually paid. The statute is protective of the public as well as the wage earner. If the state legislature and state supreme court find that the statute is of a public interest, the supreme court of the United States will accept such judgment in the absence of facts to support the con-

trary conclusion. Unless the supreme court of the United States can find beyond question that chapter 174, Laws of 1913, is a plain, palpable invasion of rights secured by the fundamental law and has no real or substantial relation to the public morals or public welfare, then the law must be sustained. The United States supreme court has not yet held that a state statute such as the one in the case at bar [fols. 59-72] is unconstitutional, and until such time—Adkins v. Children's Hospital, 261 U. S. 525, is not controlling—we shall adhere to our holding in the case of Larsen v. Rice, 100 Wash. 642, 171 Pac. 1037; and Spokane Hotel Co. v. Younger, 113 Wash. 359, 194 Pac. 595. It does not appear upon the face of the minimum wage law or from any facts of which the supreme court of the United States must take judicial notice that in the state of Washington evils did not exist for which our minimum wage law was an appropriate remedy. The action of the state legislature and of this court indicates that such evils do exist.

The judgment is reversed and the cause remanded with instructions to the trial court to enter judgment in favor of the appellant in an amount equal to the difference between the amount paid and the amount due under the minimum wage law. Millard, C. J.

Concurring: Holcomb, J. Main, J. Blake, J. Beals, J.

[fols. 73 & 74] In Supreme Court of Washington

[Title omitted]

Order Denying Petition for Rehearing—Filed May 20, 1936

The court having considered respondent's petition for a rehearing herein;

It is Ordered that the petition be and it hereby is denied.

It is Further Ordered that the going down of the remittitur be withheld for thirty days to permit respondent to obtain a review of the decision of this court by the Supreme Court of the United States.

Dated this 20th day of May, 1936.

By the Court:

William J. Millard, Chief Justice.

[File endorsement omitted.]

[fol. 75] IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER DENYING MOTION TO RECONSIDER ORDER DENYING PETITION FOR REHEARING—Filed June 22, 1936

The court having considered respondent's request for reconsideration of the order denying its petition for rehearing herein;

It is Ordered that the request be and it hereby is denied;

And it is Further Ordered that the sending down of the remittitur be delayed for a period of thirty days to permit the petitioner to prosecute its appeal to the Supreme Court of the United States.

Dated this 22d day of June, 1936.

By the Court:

William J. Millard, Chief Justice.

[File endorsement omitted.]

[fol. 76] IN SUPREME COURT OF WASHINGTON

[Title omitted]

NOTICE OF ASSOCIATION OF COUNSEL—Filed June 26, 1936

To the Above Named Appellants, and to C. B. Conner, Esq., Their Attorney:

Please Take Notice that the firm of Roberts and Skell, Attorneys at law, of Seattle, Washington, have become associated with the undersigned as counsel for the Respondent in all further matter pertaining to this cause, both in the Supreme Court of the State of Washington and in the Supreme Court of the United States.

Dated at Wenatchee, Washington, this 23 day of June, 1936.

Crollard & O'Connor, by Fred M. Crollard, Attorneys for Respondent.

Service of the within Notice and a true copy thereof acknowledged this 25th day of June, 1936.

C. B. Conner, by R. B., Attorney for Appellants.

[File endorsement omitted.]

[fol. 77] IN SUPREME COURT OF WASHINGTON

Chelan County No. 12215

No. 26038

ERNEST PARRISH and ELSIE PARRISH, His Wife, Appellants,

vs.

WEST COAST HOTEL COMPANY, a Corporation, Respondent

JUDGMENT

This cause having been heretofore submitted to the Court, upon the transcript of the record of the Superior Court of Chelan County, and upon the argument of counsel, and the Court having fully considered the same and being fully advised in the premises, it is now, on this 9th day of July, A. D. 1936, on motion of C. B. Conner, Esquire, of counsel for Appellants, considered, adjudged and decreed that the judgment of the said Superior Court be, and the same is hereby reversed and the cause remanded to the trial court to enter judgment in favor of appellant in an amount equal to the difference between the amount paid and the amount due under the minimum wage law and that the said Ernest Parrish and Elsie Parrish his wife have and recover of and from the said West Coast Hotel Company, a corporation, the costs of this action taxed and allowed at Eighty and 55/100 ($80.55) Dollars, and that execution issue therefor. And it is further ordered, that this cause be remitted to the said Superior Court for further proceedings, in accordance herewith.

[fol. 78] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

PETITION FOR APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON TO THE SUPREME COURT OF THE UNITED STATES—Filed July 9, 1936

To the Hon. William J. Millard, Chief Justice of the Supreme Court of the State of Washington:

West Coast Hotel Company, a corporation, your petitioner, respectfully shows:

I

That the petitioner is the respondent in the above entitled cause.

II

The above named appellants heretofore filed a complaint in the Superior Court of the State of Washington for Chelan County for the recovery of wages representing the difference between the wage actually agreed upon and paid and the minimum wages specified by the Industrial Welfare Commission of the State of Washington under the authority granted by Remington 7623 et seq., being Chapter 174 of the laws of Washington, 1913, as the same appears on page 602 of said volume, and that upon said cause coming duly on for trial the court did find in favor of your petitioner upon the ground and for the rea-
[fol. 79] son that the same was void under the Constitution of the United States.

III

An appeal from said judgment to the Supreme Court of the State of Washington was reversed by said Supreme Court of the State of Washington on the 2nd day of April, 1936, and thereafter your petitioner applied for a rehearing, which was denied by said court on the 21st day of May, 1936, and your petitioner thereafter moved the court to reconsider such denial and the same was refused on the 22nd day of June, 1936.

IV

In said cause there is drawn in question the validity of a statute of the State of Washington, on the ground of its being repugnant to the United States, and the decision is in favor of its validity, in that it is held that the state minimum wage law, being Remington's Revised Statutes of Washington, section 7623 et seq. and Chapter 174 of the Laws of 1913, being entitled "An Act to protect the lives, health, morals of women and minors, workers, establishing an industrial welfare commission for women and minors, prescribing its powers and duties, and providing for the fixing of minimum wages and the standard condition of labor for such workers and providing penalties for violation of the same, and making an appropriation therefor", for the reason that the same is in violation of section 1 of Amendment XIV of the Federal Constitution in that it is an unconstitutional interference with the freedom of contract guaranteed by the provisions of the Federal Constitution cited.

Wherefore, petitioner prays for the allowance of an appeal from said Supreme Court of the State of Washington to the Supreme Court of the United States in order that the decision of the Supreme Court of the State of Wash- [fol. 80] ington may be examined and reversed and also prays that a transcript of the record, proceedings and papers in the case, duly authenticated by the clerk of the Supreme Court of the State of Washington, may be sent to the Supreme Court of the United States, as provided by law.

Petitioner, desiring the appeal to be a supersedeas, prays an order touching the security to be required of it, and the approval of such bond as required in this case. The errors upon which your petitioner claims to be entitled to an appeal are those above indicated and more fully set out in the Assignment of Errors filed herewith.

Dated this 8th day of July, 1936.

Crollard & O'Connor, Roberts & Skeel, John W. Roberts, Attorneys for Proposed Appellants.

[fol 81] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ASSIGNMENT OF ERRORS—Filed July 9, 1936

The petitioner and appellant assigns the following errors in the record and proceedings in this cause:

1. That the court erred in ruling that Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes (1932) section 7623-7640 inclusive, entitled "Minimum Wages for Women", approved March 24, 1913, was not unconstitutional and void and repugnant to section 1 of Article XIV of the Constitution of the United States insofar as it attempts to regulate the wages of adult women in that it deprives petitioner of the right to contract without due process of law.

2. The statute of the State of Washington, to-wit, Chapter 174, Laws of 1913, page 602, Remington's Revised Statutes (1932), sections 7623 to 7640 inclusive, entitled "Minimum Wages for Women, approved March 24, 1913", is unconstitutional and void as repugnant to section 1 of Article XIV of the Constitution of the United States in that it impairs the freedom of contract of the petitioner, and that the Supreme Court of the State of Washington erred in holding the same valid.

3. The Supreme Court of the State of Washington erred in ruling that the aforesaid statute of the State of Wash- [fols. 82-92] ington was a valid or constitutional regulation.

Wherefore, on account of the errors hereinabove assigned, the petitioner prays that the said judgment of the Supreme Court of the State of Washington, dated the 9th day of July, 1936, in the above entitled cause be reversed and judgment be rendered in favor of the petitioner.

Dated this 9th day of July, 1936.

Crollard & O'Connor, Roberts & Skeel, John W. Roberts, Attorneys for Appellant.

[fol. 93] [File endorsement omitted]

IN SUPREME COURT OF WASHINGTON

[Title omitted]

ORDER ALLOWING APPEAL—Filed July 9, 1936

The petition of West Coast Hotel Company, a corporation, the appellant in the above entitled cause, for an appeal in the above cause to the Supreme Court of the United States from a judgment of the Supreme Court of the State of Washington having been filed with the clerk of this court and presented herein, accompanied by assignments of error and statement as to jurisdiction, all as provided by Rule 46 of the Rules of the Supreme Court of the United States, and the record in this cause having been considered, it is hereby

Ordered that an appeal be and it is hereby allowed to the Supreme Court of the United States from the final judgment dated July 9, 1936, of the Supreme Court of the State of Washington, as prayed in said petition, and that the clerk of the Supreme Court of the State of Washington [fol. 94] shall, within sixty days from this date, make and transmit to the Supreme Court of the United States, under his hand and the seal of said court, a true copy of the material parts of the record herein, which shall be designated by præcipe or stipulation of the parties or their counsel herein, all in accordance with Rule 10 of the Rules of the Supreme Court of the United States.

It is Further Ordered that the said appellant shall give a good and sufficient bond in the sum of $1,000.00 that said appellant shall prosecute said appeal to effect and answer all costs if it fails to make its plea good.

This appeal shall operate as a supersedeas.

Dated this 9th day of July, 1936.

William J. Millard, Chief Justice of the Supreme Court of the State of Washington.

[fols. 95-98] Bond on appeal for $1,000.00, approved and filed July 9, 1936, omitted in printing.

[fols. 99-102] Citation, in usual form, showing service on C. B. Conner, filed July 22, 1936, omitted in printing.

[fol. 103] [File endorsement omitted]

IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

PRÆCIPE FOR TRANSCRIPT UPON APPEAL—Filed July 22, 1936

To the Hon. Benj. T. Hart, Clerk of the Supreme Court of the State of Washington:

You will please prepare in accordance with Rule 10 of the Rules of the Supreme Court of the United States, a transcript on appeal in the above appeal consisting of the following parts of your files and record on the above entitled cause:

1. Transcript of record of Superior Court, Chelan County.
2. Supplemental transcript of record of Superior Court of Chelan County. (Find-s of fact and conclusions of law of Superior Court of the State of Washington for Chelan County.)
3. Statement of facts, including all incorporated exhibits.
4. Opinion of the Supreme Court of the State of Washington.
5. Petition for rehearing.
6. Order denying rehearing.
7. Motion to reconsider denial of rehearing.
8. Order denying motion to reconsider denial of rehearing.
9. Notice of association of counsel.
10. Judgment of the Court.
11. Petition for appeal.

[fols. 104–111] 12. Assignment of errors.

13. Statement as to jurisdiction.
14. Order allowing appeal and fixing bond.
15. Bond upon appeal.
16. Citation. (Original.)

17. Statement directing attention to the United States Court Rule 12. (Original.)
18. Proof of service of papers required by Rule 12. (Original.)
19. Præcipe for transcript on appeal and proof of service thereon.
20. Clerk's Certificate.

Dated this 15th day of July, 1936.

John W. Roberts, Crollard & O'Connor, Roberts and Skeel, Attorneys for Appellant.

Acknowledgement of Service and Stipulation

The undersigned, attorney for the Appellees, hereby acknowledge due and proper service of the above præcipe and does hereby stipulate and agree that the papers listed are all that are necessary for the completion of the records upon appeal and that the Clerk may immediately proceed with the preparation of such records.

Dated this 18 day of July, 1936.

C. B. Conner, Attorney for Appellee.

Acknowledgement of Service

The undersigned, attorney for the Appellees above named does hereby acknowledge due and proper service of the foregoing præcipe.

Dated this 18 day of July, 1936.

C. B. Conner, Attorney for Appellee.

[fol. 112] [File endorsement omitted]

In Supreme Court of the United States

[Title omitted]

Agreed Narrative Statement of Evidence and Opinion of the Superior Court of Chelan County—Filed August 10, 1936

Be it Remembered that on the 17th day of October, 1935, in the Superior Court of the State of Washington for Chelan County the above entitled cause came on for trial

before the Hon. W. O. Parr, Judge of said court, the plaintiffs, appellees above named, being represented by their attorney of record, C. B. Conner, and the appellant above named appearing by its attorneys of record, Crollard and O'Connor by Fred. M. Crollard.

Thereupon both sides having announced that they were ready for trial, the following proceedings were had and testimony given.

ELSIE PARRISH, being called as a witness on her own behalf testified as follows:

I reside in Wenatchee, Washington. I have been employed by the West Coast Hotel Company and at all times [fol. 113] during said employment I was over the age of 21 years. I started to work for the hotel in the first part of August, 1933 (4). I was doing general maid service such as making beds, cleaning, dusting, etc., which is generally known as chamber maid work. All of the work was done at the Cascadian Hotel, Wenatchee, Chelan County, Washington.

I also worked in 1934 and 1935 and received a total of $481.95 for my services. The balance of the money earned has not been paid to me (5).

At the time of my discharge the hotel company owed me $216.19. After my discharge I made demand for this balance, but it was not paid to me, and the sum of $17.00 was tendered to me in full, which I refused to accept.

Upon cross-examination by Mr. Crollard, attorney for the hotel company, this witness testified as follows:

I was discharged on May 13, 1935. I could not say how many hours I had worked in May, 1935, but I think it would be near 54. I could not say if I had been paid to the 30th of April. I know that I received checks on the 5th and 20th of each month (6). I was paid regularly on the 5th and 20th, and had been paid to the last of April, but did not get my pay for the last two weeks. When I was discharged I was offered $17.00 in full by Mr. Abel, manager of the hotel, and I did not accept it. I then told him that I was entitled to $216.19, which sum I demanded (7). I figured this amount rapidly as I had been keeping a record of my own time for each hour I had worked. I did not

begin keeping time until after I had worked in the hotel several months.

I could not say what rate of pay I received when I first started to work for the hotel company. I cannot state from memory the number of hours I worked during each month, [fol. 114] but the record is substantially correct as to such hours, and in August, 1933 I worked 24½ hours (8). I was paid $5.39 on August 20, 1933 by the hotel company by check which I cashed. Likewise I was paid $5.17 on the 5th of September, 1933, and $17.82 on the 20th of September, 1933. I accepted the checks and made no objection (9).

There was nothing said about wages when I was hired. I was not keeping time at the beginning. After I began to keep my time I tried to figure out what I was getting. On October 5 and 20, 1933, I received and cashed the hotel company's checks for $12.00 and $7.75 respectively. They were given me for the work done during October, 1933, and I accepted them. It was March 16, 1934, that I started keeping my record. I did not do any work for the hotel company during November and December, 1933 and January, 1934, but came back to work in February, 1934 (10). Thereafter I regularly received defendant's checks on the 5th and 20th of each month for the balance of the year through December 20, 1934. I cashed the checks which were given to me by the hotel company in payment for my services between the dates of the checks. I did not object to any of the checks on the ground that it was not the right amount, but accepted and cashed them (11).

Through January 5, 1935, to May 5, 1935, I received the payroll checks on the 5th and 20th of each month and accepted them in payment of my services for the period shown on the checks. I was tendered $17.00 at the time of my discharge and I did not accept it (12).

I kept track of the checks I received and put it down in my time book. I had in mind that I should have been paid the state wage and that it would be paid. I did not put [fol. 115] down in my record the amount I should have received. I never made any demand upon the hotel company or any of its agents for the state wage until my discharge. There was nothing ever said about wages. I took what they gave me because I needed the work so badly, and I figured the defendant would pay what was right * * * the state wage. I had the state wage in mind all of the while * * * at least a short time after I began working

there. There was no reason why I should call it to the defendant's attention until the present time (13).

On Redirect Examination by the appellees' attorney she testified as follows:

The question of whether or not the checks were in full for my services was never presented when I received the checks. There was no conversation between myself and the hotel officers until my discharge. When I was discharged I went to the counter as usual for my check. The housekeeper had told me that I was discharged and to get my check. Mr. Abel, the manager, was not there, and a clerk offered me the $17.00 check in full which I refused: I saw Mr. Abel a few days later and told him I did not take the $17.00 check and I have never received it (14).

It was then by stipulation of counsel agreed that the printed copy of Order No. 23 of the Industrial Welfare Committee of Washington might be admitted as the duly adopted act of the said committee, a printed copy of the same being attached to this statement and incorporated at this point (15).

Roy W. Clark, called as a witness on behalf of the defendant and appellant, West Coast Hotel Company, testified as follows:

During 1933 and part of 1934 I was manager of the Cascadian Hotel in Wenatchee, Washington. I am acquainted with Mrs. Parrish, who was employed as a chamber maid [fol. 116] at the hotel. She received the same pay all other maids received at that time—22½ cents per hour. Later this was raised to 25 cents an hour (16). She was paid regularly twice a month. She never objected to any check or made any claim that the checks were not in the right amount. I left the Cascadian in September or October, 1934 and was succeeded by Mr. Abel.

Upon Cross-Examination by Mr. Conner, attorney for plaintiffs and appellees, this witness testified as follows:

I knew at the time that I was manager of the Cascadian Hotel that the minimum wage law was in effect, and that

the minimum wage for chamber maid work had been fixed at $14.50 per week (18).

WILLARD ABEL, called as a witness on behalf of the defendant and appellant, West Coast Hotel Company, on Direct Examination testified as follows:

I am now and have been for about one year manager of the Cascadian Hotel, succeeding Mr. Clark, who has just testified. Mrs. Parrish was employed during that period at the hotel at an hourly wage of 25 cents per hour. She was discharged in May, 1935, and there was owing to her at that time $17.00. That amount was tendered to her at that time and she refused it.

On Cross-Examination by Mr. Connor, attorney for the plaintiffs and appellees, this witness testified as follows:

I knew that the statutory wage for Mrs. Parrish's services was $14.50 during this period, and at the time she was tendered the $17.00. It is the formal procedure of the company at all times when an employee is discharged to pay off in full and take a receipt.

Upon introduction of the above testimony both parties rested and the attorneys for the defendant hotel company (appellant here) challenged the sufficiency of the evidence [fol. 117] to justify any recovery as showing an employment at 22½ cents and 25 cents an hour, and that the minimum wage statute, being Chapter 174 of the laws of Washington, 1913, as amended, was unconstitutional in that it was in conflict with the Constitution of the United States in that it violated the Fourteenth Amendment thereof.

Whereupon the court orally announced its decision as follows:

OPINION

Hon. W. O. PARR, Judge:

Well, we will suppose this: Suppose that these two cases (Stettler v. O'Hara, 69 Ore. 519, and Simpson v. O'Hara, 70 Ore. 261) did decide, definitely, that the law

was constitutional, and that the United States Court had at that time affirmed it, and wrote an opinion, affirming it; and then suppose, later, exactly the same question comes before them, and they arrive at a contrary conclusion. What would be the law?

In other words, the latest pronouncement of the highest court of the land IS the law of the land, until it is reversed, as I understand it; and, even though the court in this state has reached a conclusion that the law is constitutional, if the court of the United States has reached a different conclusion that, of course, disposes of the matter.

There can be, in my judgment, no doubt about the similarity between the cases decided by the United States Supreme Court and this case. They are almost exactly on all fours. They held, specifically, that it is unconstitutional to fix, by law, a wage scale for adult persons. One of the members of our own court, in the very recent decision, and the one cited by Mr. Crollard there, specifically made the same statement. That was made subsequent to the United [fol. 118] States decision. He used it to illustrate one of the things which the Legislature could not do; that is, fix a wage for adult persons—anyone.

Now this case, in my judgment, raises the constitutional question. If the law is valid, then I'd say she has the money coming. If the law isn't valid, she doesn't have. There could be no doubt about the fact that her wages were paid her by the hotel company, on the theory that they were paying her all she had coming, and there is no doubt she was so paid, even though she had in her mind that she might have recovered the amount the statute provided. That doesn't change the fact. She received it without complaint, as payment for the work she was doing, which would constitute a binding contract, if such contract could be made.

If the law fixes a minimum wage, then I say she is entitled to her money. If that law is invalid then, of course, she is obliged to accept what she has received from time to time, and paid her as full settlement for what she has done.

It seems to me that the decision of the highest court of the land (Adkins v. Children's Hosp. 261 U. S. 525) settles this question absolutely, and beyond all question, for the time being. I am not inclined to join the Kansas Court in saying that, but for the decision, I should like to do some-

thing else, because I do believe that it is in full accord with the principles on which our order is founded, that it is in accord with both the letter and the spirit of the Constitution; so I believe the decision to be soundly right. Of course, it doesn't make any difference what this court thinks about it, nevertheless that is the view of the Court, not, as I say, joining the Kansas Court in apologizing for following the decision of the highest court of the land.

[fol. 119] I appreciate that this matter is of considerable importance, but it seems to me that it was decided quite a while before this case was started, and in a manner that absolutely controls and binds this court, and all courts of the land.

The Plaintiffs' action will be dismissed.

Mr. Conner: Exception.

Judge Parr: Exception noted.

[fol. 120] ACKNOWLEDGMENT OF SERVICE AND STIPULATION APPROVING STATEMENT OF EVIDENCE AND OPINION OF THE COURT

The undersigned attorney for the appellees above named does hereby expressly acknowledge service this date of a copy of the above entitled document and does hereby expressly stipulate and agree that the same constitutes a true and correct narrative statement of all the evidence submitted in the above entitled cause and all of the evidence necessary for the consideration of the court, and that the same may be so certified by the Chief Justice of the Supreme Court of the State of Washington, or any acting Chief Justice thereof, to be forwarded with the transcript of the case and used in place of the statement of facts heretofore filed with the Supreme Court of the State of Washington.

Dated this — day of August, 1936.

——, Attorney for Appellees.

[fol. 121] CERTIFICATE

The undersigned Chief Justice of the above entitled court does hereby certify that the foregoing is a true and correct narrative statement of the evidence submitted in the above entitled cause as shown by the statement of facts heretofore certified by the Hon. W. O. Parr, Judge of the Superior Court of the State of Washington for Chelan County, the same being all of the evidence considered by this court in its decision and judgment rendered in said cause, and being all of the evidence stipulated by counsel as necessary for the hearing thereof.

Done in Open Court this 10th day of August, 1936.

William J. Millard, Chief Justice.

Presented by: John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

Approved by: C. B. Conner, Attorney for Appellees.

[fol. 122] I. W. C. Order No. 23

Department of Labor and Industries

Industrial Welfare Committee of the State of Washington

Olympia, Washington, August 5, 1921.

To Whom It May Concern:

Take Notice: That pursuant to the authority in it vested by Chapter 174 of the Session Laws of the State of Washington for 1913, and pursuant to the recommendations of the Public Housekeeping Conference of representatives of employers and employees in the different occupations in the Public Housekeeping Industry throughout the state, together with representatives of the public, duly held after investigation of such industry, which said recommendations were duly approved by said Industrial Welfare Committee;

[The term Public Housekeeping shall include the work of: linen room girls, chambermaids, cleaners, kitchen girls, dishwashers, pantry girls, pantry servers, waitresses, counter girls, bus girls, elevator operators, janitresses, laundry workers (except where a commercial laundry is operated),

and any other occupation which would properly be classified under Public Housekeeping. The establishments shall include: hotels, rooming houses, boarding houses, restaurants, cafes, cafeterias, lunch rooms, tea rooms, apartment houses, hospitals (not nurses), philanthropic institutions, and any other which may be properly classified under this industry.]

The Industrial Welfare Committee for the State of Washington does hereby Order:

(1) That no person, firm, association or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State at a weekly wage rate of less than fourteen dollars and fifty cents ($14.50) per week of forty-eight hours, or at a daily wage rate of less than two dollars and fifty cents ($2.50) per day of eight hours, or at an hourly wage rate of less than thirty-five cents (35c) per hour, such wage rates being the estimate of said Conference of the minimum wage adequate to supply the necessary cost of living and to maintain such employees in health and comfort. (The interpretation of this paragraph affecting the wage rates shall be that the weekly wage rate shall prevail where the employment extends over a period of one week or more; that the daily wage rate shall prevail where employment is for one or more days of eight hours, and the hourly wage rate shall prevail where employment is for less than eight hours in any one day.)

(2) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than six days in any one week: Provided, however, That when a sufficient emergency exists, such as renders it absolutely impossible to secure efficient substitute help, the employees in the Public Housekeeping Industry may be employed for a continuous period of not exceeding ten consecutive days, at the expiration of which ten-day period they shall be given one day's rest. This emergency privilege shall not preclude any such employee from having at least four days' rest in any twenty-eight day period.

(3) That no person, firm, association, or corporation shall employ any female over the age of eighteen years in any occupation in the Public Housekeeping Industry throughout the State more than five hours without a rest period of at least one-half hour; that a schedule of hours be posted in all cases.

(4) That where a special uniform be required it must be furnished and laundered by the employer.

(5) That when meals are furnished to employees the time used in eating may be deducted in arranging the schedule; that if a room be furnished same must be properly heated and sanitary.

(6) That there must be separate toilets for women and a suitable room provided for change of clothing and for eating lunches.

(7) That women shall not be employed as elevator operators after 12:00 midnight.

(8) That women shall not be employed as "bell hops."

(9) That when board is furnished 95 cents per day may be deducted; and for a room furnished $2.00 per week may be deducted; that 20 cents may be deducted for breakfast, 30 cents for lunch and 45 cents for dinner; that in every case there shall be a definite agreement as to whether board and room shall or shall not be furnished; that otherwise the straight wage scale shall prevail.

(10) This Order shall become effective sixty (60) days from the date hereof, or October 4th, 1921, and supersedes all other Orders heretofore issued, covering this Industry.

Industrial Welfare Committee, for the State of Washington. (Seal Industrial Welfare Committee for the State of Washington.)

[fol. 123] IN SUPREME COURT OF THE UNITED STATES

[Title omitted]

SUPPLEMENTAL PRÆCIPE FOR TRANSCRIPT—Filed August 10, 1936

To the Hon. Benjamin T. Hart, Clerk of the Supreme Court of the State of Washington:

You are hereby respectfully requested to include in the transcript to be forwarded to the Supreme Court of the United States in the above entitled cause the Agreed Narrative Statement of Evidence and the Opinion of the Superior Court of the State of Washington for Chelan County, together with this Supplemental Præcipe for Transcript.

Dated this 5th day of August, 1936.

John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

[fol. 124] The undersigned counsel for appellees does hereby acknowledge receipt of the above supplemental præcipe and does hereby expressly stipulate and agree that the same may be included in the record on appeal.

Dated this 6 day of August, 1936.

C. B. Conner, Attorney for Appellees.

[File endorsement omitted.]

[fol. 125] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 126] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS TO BE RELIED UPON, DESIGNATION OF PARTS OF RECORD TO BE PRINTED AND ACCEPTANCE OF SERVICE THEREOF—Filed August 17, 1936

Comes now the appellant in the above entitled cause and states that the points upon which it intends to rely in this court in this cause are as follows:

1. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's

Revised Statutes 1932, section- 7623-7640, inclusive, entitled "Minimum Wages for Women", approved March 24, 1913, is unconstitutional and void and repugnant to section 10, Article XIV of the Constitution of the United States insofar as it attempts to regulate the wages of adult women in that it deprives appellant of the right to contract without due process of law.

2. That the statute of the State of Washington, to-wit, Chapter 174 of the Laws of 1913, page 602, Remington's Revised Statutes 1932, section- 7623-7640, inclusive, entitled "Minimum Wages for Women", approved March 24, 1913; [fol. 127] is unconstitutional and void as repugnant to section 1, Article XIV of the Constitution of the United States, in that it impairs the freedom of contract of the appellant.

3. That the Supreme Court of the State of Washington erred in ruling that the aforesaid statute of the State of Washington was a valid or constitutional regulation.

Dated this 5th day of August, 1936.

John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

Designation of Parts of Record to be Printed

Comes now the appellant in the above entitled cause and respectfully designates the following parts of the record in the above entitled cause to be printed:

1. Transcript of record of the Superior Court of the State of Washington for Chelan County, omitting therefrom motion for new trial, order denying motion for new trial, appeal bond and certificate of clerk (Record 1 to 20).

2. Supplemental transcript of record (findings of fact and conclusions of law) (Record 21-24).

3. Narrative statement of evidence and opinion of the Superior Court of Chelan County (Record 112 to 122).

4. Opinion of the Supreme Court of the State of Washington (Record 47-59).

5. Order denying petition for rehearing (Record 73).

[fol. 128] 6. Order denying motion to reconsider denial of rehearing (Record 75).

7. Notice of association of counsel (Record 76).

8. Judgment of the Supreme Court (Record 77).

9. Petition for appeal (Record 78-80).

10. Assignment of Errors (Record 81-82).

11. Order allowing appeal and fixing bond (Record 93-94).

12. Cost bond (Record 95-98).

13. Original citation (Record 99-100).

14. Original statement directing attention to United States Court Rule 12, and proof of service of papers required by Rule 12 (original) (Record 101-102).

15. Præcipe for transcript on appeal and proof of service thereon (Record 103-104).

16. Supplemental Præcipe for transcript for narrative statement of evidence (Record 123-124).

Dated this 5th day of August, 1936.

John W. Roberts, Crollard & O'Connor, Roberts & Skeel, Attorneys for Appellant.

Acceptance of Service of Points to be Relied Upon and of Parts of Record to be Printed

I, C. B. Conner, of Wenatchee, Washington, attorney of record for the appellees, hereby acknowledge due and timely service of the above statement of points to be relied upon [fol. 129] and designation of parts of the record to be printed, and agree that the said designation includes all parts of the record material and necessary to a consideration of the case, and hereby expressly waive all right to file a counter designation of parts of the record to be printed.

Dated this 6 day of August, 1936.

C. B. Conner, Attorney for Appellees.

[fol. 130] [File endorsement omitted.]

Endorsed on cover: Enter John W. Roberts. File No. 40,833. Washington Supreme Court. Term No. 293. West Coast Hotel Company, appellant, vs. Ernest Parrish and Elsie Parrish, his wife. Filed August 17, 1936. Term No. 293 O. T. 1936.

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